

STATE OF MARYLAND

Craig P. Tanio, M.D.  
CHAIR



Ben Steffen  
EXECUTIVE DIRECTOR

**MARYLAND HEALTH CARE COMMISSION**

4160 PATTERSON AVENUE – BALTIMORE, MARYLAND 21215  
TELEPHONE: 410-764-3460 FAX: 410-358-1236

March 23, 2017

By E-Mail and USPS

M. Natalie McSherry, Esquire  
Kramon & Graham, PA  
One South Street, Suite 2600  
Baltimore, Maryland 21202

Jonathan Montgomery, Esquire  
Gordon-Feinblatt LLC  
233 East Redwood Street  
Baltimore, Maryland 21202-3332

Re: Motion to Strike and Motion *in Limine*  
Baltimore Upper Shore Cardiac Surgery Review  
Anne Arundel Medical Center (Docket No. 15-02-2360)  
University of Maryland Baltimore Washington Medical Center  
(Docket No. 15-0202361)

Dear Ms. McSherry and Mr. Montgomery:

On March 17, 2017, Dimensions Health Corporation d/b/a Prince George's Hospital Center ("PGHC") filed a Motion to Strike and Motion *in Limine* in the Baltimore Upper Shore Cardiac Surgery Review. As grounds for its motion, PGHC asserts that Anne Arundel Medical Center ("AAMC") raised certain arguments in its March 16, 2017 Response to Exceptions that should not be allowed because AAMC did not properly take exception to the Revised Recommended Decision's findings regarding those arguments. (Motion ¶¶ 6-7). PGHC requests that I strike the arguments in question from AAMC's Response to Exceptions and that AAMC be precluded from raising such arguments at the exceptions hearing scheduled for March 23, 2017. (Motion at ¶ 8). I have considered PGHC's motion, the opposition filed by AAMC, and Baltimore Washington Medical Center's ("BWMC") response joining the motion, and, for the reasons stated below, I grant PGHC's motion.

On June 24, 2016, PGHC filed a Motion to Supplement its Comments on AAMC's CON application. (DI #62GF).<sup>1</sup> The information PGHC sought to add included data showing that its annual volume of cardiac surgery cases for CY 2015 was over 100, and that its STS Composite Quality Rating had improved to three stars.<sup>2</sup> (DI #62GF, p. 2). On July 29, 2016, AAMC filed an opposition to this motion, claiming among other things, that PGHC's attempt to introduce this new evidence was untimely under the schedule required by COMAR 10.24.01.08F(1)(c). (DI #66GF). On August 12, 2016, PGHC filed a reply to AAMC's opposition. (DI #67GF).

I granted PGHC's motion on October 31, 2017. (DI #92GF). In my ruling I found that

COMAR 10.24.17.05A(2)(b)(iii) requires that the Commission consider whether an application to establish cardiac surgery services will result in an existing program that has performed more than 100 cardiac surgery cases and that has an STS rating of two or more stars 'for two of the three most recent rating cycles *prior to Commission action on an application* (emphasis added)' to drop below an annual volume of 100 cardiac surgery cases.  
(DI #92GF, p. 2).

On March 3, 2017, I issued my Revised Recommended Decision. Reiterating what I found in my October 31, 2016 ruling granting PGHC's motion to supplement, I found that "[t]he impact standard requires me to consider whether an existing program, such as PGHC, that is performing over 100 cardiac surgery cases annually and has an STS rating of two or more stars 'for two of the three most recent rating cycles *prior to Commission action on an application*' will be caused to drop below an annual volume of 100 cardiac surgery cases." (Revised Recommended Decision at p. 44, emphasis in original). I also specifically found that the supplemental information provided by PGHC showed that it had "recently reached an annual volume of 100 cases and has also been given a three-star STS rating." (*Id.*)

On March 10, 2017, AAMC filed its response to the Revised Recommended Decision, stating that it "files no exceptions to the [Revised] Recommended Decision." (AAMC March 10, 2017 Response, at p. 2). On March 16, 2017, in its Response to Exceptions, AAMC argued that whether PGHC is entitled to the protections of COMAR 10.24.17.05A(2)(b)(iii) is "still questionable" because the standard is unclear regarding both the determination of the relevant time period for volume calculations and the determination of the proper STS rating cycles. (AAMC March 23, 2017 Response, at pp. 18-19).

Pursuant to COMAR 10.24.01.09B(2)(b), any exceptions that AAMC wished to take regarding the Revised Recommended Decision, including any exception relating to my finding regarding the applicability of COMAR 10.24.17.05A(2)(b)(iii), should have been filed by March

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<sup>1</sup> "DI" citations refer to the Docket Items contained in Appendix 1 of the Revised Recommended Decision.

<sup>2</sup> At the time it filed its initial Comments in July 2015, PGHC reported that it had performed 85 cardiac surgery cases in FY 2015, and that its program had received a two-star STS rating for the rating cycle covering the second half of CY 2014. (DI #62GF, p. 2).

Natalie McSherry, Esq.  
Jonathan Montgomery, Esq.  
Motion to Strike and Motion in Limine  
March 23, 2017  
Page 3

10, 2017. On that date, however, AAMC filed a response in which it specifically stated that it “files no exceptions to the [Revised] Recommended Decision.” (AAMC March 10, 2017 Response, at p. 2). Six days after the date for filing exceptions, AAMC raised its exception to the Revised Recommended Decision’s finding on the applicability of COMAR 10.24.17.05A(2)(b)(iii). Accordingly, that portion of AAMC’s March 16, 2017 Response to Exceptions raising that issue is hereby stricken and AAMC is precluded from raising this exception at the March 23, 2017 hearing.

I want to remind all parties that this remains a contested case and that the *ex parte* prohibitions in the Administrative Procedure Act, Maryland Code Ann., State Gov’t §10-219, apply to this proceeding until the Commission issues a final decision.

Sincerely,

A handwritten signature in black ink, appearing to read 'Craig Tanio', with a stylized flourish at the end.

Craig Tanio, M.D.  
Chair/Reviewer

cc: Thomas C. Dame, Esq.  
Ella A. Aiken, Esq.  
John T. Brennan, Esquire  
Stephanie Willis, Esquire  
Neil M. Meltzer, President & CEO, LifeBridge Health  
Jinlene Chan, MD, MPH, Anne Arundel County Health Officer  
Steven R. Schuh, Executive, Anne Arundel County  
Leana S. Wen, M.D., Baltimore City Health Commissioner  
Gregory Wm. Branch, M.D., Baltimore County Health Officer  
Leland Spencer, M.D., Caroline and Kent County Health Officer  
Edwin F. Singer, L.E.H.S., Carroll County Health Officer  
Stephanie Garrity, M.S., Cecil County Health Officer  
Susan C. Kelly, R.S., Harford County Health Officer  
Maura J. Rossman, M.D., Howard County Health Officer  
Joseph A. Ciotola, M.D., Queen Anne’s County Health Officer  
Fredia Wadley, M.D., Talbot County Health Officer  
Paul Parker  
Kevin McDonald  
Suellen Wideman, AAG  
Siobhan K. Madison, AAG